# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 7489 of 1998

**For Approval and Signature:**

**HON'BLE MR.JUSTICE D.A.MEHTA**
**HON'BLE MS.JUSTICE H.N.DEVANI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**GUJARAT HEAVY CHEMICALS LTD & 1 - Petitioner(s)**

**Versus**

**UNION OF INDIA & 3 - Respondent(s)**

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**Appearance :**
MR.RAKESH GUPTA for M/S TRIVEDI & GUPTA for Petitioner

MR JITENDRA MALKAN for Respondent No(s).: 1.
None for Respondent No(s).: 2,4.
MR ASIM J PANDYA for Respondent No(s).: 3.
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**CORAM : HON'BLE MR.JUSTICE D.A.MEHTA**
**and**
**HON'BLE MS.JUSTICE H.N.DEVANI**

**Date : 21/07/2005**

**ORAL JUDGMENT**

**(Per : HON'BLE MR.JUSTICE D.A.MEHTA)**

1. This petition was filed challenging letters dated 10-2-1998 (Annexure “A”), 2-4-1998 (Annexure “D”) and 17-8-1998 (Annexure “J”). In the first letter dated 10-2-1998 (Annexure “A”), the Superintendent, Central Excise, AR-II, Veraval (respondent No.4) called upon the petitioner that modvat credit may not be availed of for the purposes of payment of duty as the petitioner's unit at Sutrapada was proposed to be audited by a Cost Accountant under Sections 14A and 14AA of the Central Excise Act, 1944 (the Act). Similar is the tenor of the remaining two letters issued by respondent No.4.

2. When the matter was admitted on 24th November 1998, after hearing the parties, this Court granted interim relief in terms of paragraph No.22(C) of the petition. Accordingly, respondent Nos.2 to 4 were directed to permit the petitioner Company to utilise the modvat credit at the time of making payment of central excise duty on final products.

3. In the affidavit in reply filed by respondent No.4, while dealing with paragraph No.18 of the petition, in paragraph No.3.1 of the reply affidavit, it is accepted that, “*It is true that the provisions of*

*sections 14A and 14AA of the Central Excise Act of 1944 do not permit the department to restrain an assessee from utilising the modvat credit earned, but it is equally true that such imposition not to utilise the modvat credit is a temporary arrangement and Central Board of Excise and Customs (CBEC), New Delhi has got the power to issue such orders."*.

4. While granting interim relief, the court has noted that, till the date of the order, namely 24-11-1998, the Cost Accountant, who was required to undertake special audit in terms of Sections 14A and 14AA of the Act, had not been appointed by the respondent authorities. The learned advocate for the petitioner has stated that the petitioner had, at no time, any objection to the appointment of the special auditor in terms of the statutory provision. The limited grievance raised in this petition is as regards the direction restraining the petitioner from availing of the modvat credit for payment of duty.

5. In these circumstances, it is apparent that the petitioner has succeeded virtually when the interim relief came to be granted to the petitioner in

terms of paragraph No.22(C) of the petition. The learned advocate for the petitioner is not in a position to state as to whether, subsequent to the admission of the petition, any change in circumstances has taken place. None is present on behalf of the respondents.

6. Considering the nature and the extent of interim relief granted vide order dated 24-11-1998 made by this Court, it is apparent that the petition has become infructuous and nothing further requires to be done in absence of any surviving *lis* between the parties.

7. Accordingly, the petition is disposed of as having become infructuous. Rule made absolute to the extent of interim relief already granted. There shall be no order as to costs.

[D.A.MEHTA, J.]

[HARSHA DEVANI, J.]

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